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NORTHERN DISTRICT OF CALIFORNIA
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FILED
JUL 1 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA



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FWD REF

CV07-06002 THE

Israel Morales H-88164
C.S.P. – Solano State Prison
P.O. Box 4000
Vacaville, CA 95696-4000

6/15

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 07-06002 TEH (PR)

ORDER DIRECTING PETITIONER
TO PROVIDE COURT WITH
CURRENT ADDRESS

Petitioner,

vs.

D. K. SISTO, Warden,

Respondent.

On November 28, 2007, Petitioner filed a pro se petition for a writ of habeas corpus. On that same day, the Court sent a notification to Petitioner informing him that he had neither paid the filing fee nor submitted a completed application for leave to proceed in forma pauperis. The Court provided a copy of the correct in forma pauperis application, along with a return envelope, and a notification that the case would be dismissed if Petitioner failed to pay the fee or file the completed application within thirty days.

On December 26, 2007, Petitioner notified this Court that he had requested the Inmate Trust Account Office on December 19, 2007, to complete the required "Certificate of Funds in Prisoner's Account" and mail it with his attached in forma pauperis application to the Court. Petitioner requested the Court to notify him if the application was not received.

Having received no in forma pauperis application from Petitioner, on March 21, 2008, the Court granted Petitioner an extension of time of another thirty days by which to file the application and reminded Petitioner "that the ultimate filing of the necessary

pleadings is the responsibility of Petitioner, not the Inmate Trust Account Office." A copy of that order granting extension of time was mailed to Petitioner and returned to the Court on April 1, 2008, as undeliverable. See Docket no. 5. To date, Petitioner has not updated his address with the Court, nor has he paid the filing fee or submitted an in forma pauperis application.

Pursuant to Northern District Local Rule 3-11 a party proceeding pro se whose address changes while an action is pending must promptly file a notice of change of address specifying the new address. See L.R. 3-11(a). The Court may, without prejudice, dismiss an action when: (1) mail directed to the pro se party by the Court has been returned to the Court as not deliverable, and (2) the Court fails to receive within sixty days of this return a written communication from the pro se party indicating a current address. See L.R. 3-11(b).

More than sixty days have passed since the mail directed to Petitioner by the Court was returned as undeliverable. The Court has not received a notice from Petitioner of a new address. In order to ascertain whether Petitioner still is incarcerated at Solano State Prison, the Clerk shall mail this order to Petitioner at Solano State Prison. If Petitioner is incarcerated at Solano State Prison, he shall so notify the Court within **twenty (20) days** of the date this order is filed. If, however, the order is returned to the Court as not deliverable, and Petitioner has not provided a forwarding address, the petition will be dismissed without prejudice under Local Rule 3-11 and for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. See Malone v. United States Postal Serv., 833 F.2d 128, 133 (9th Cir. 1987) (court must consider alternatives before dismissing the action, such as warning of dismissal), cert. denied, 488 U.S. 819 (1988).

SO ORDERED.

DATED: 6/13/08

THELTON E. HENDERSON
United States District Judge

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Case Number: CV07-06002 TEH
CERTIFICATE OF SERVICE

ISRAEL MORALES,

Plaintiff,

v.

D.K. SISTO et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.
That on June 13, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Israel Morales H-88164
C.S.P. – Solano State Prison
P.O. Box 4000
Vacaville, CA 95696-4000

Dated: June 13, 2008

Richard W. Wiekling, Clerk
By: R.B. Espinosa, Deputy Clerk

